

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ALEC J. MEGIBOW, M.D., as assignee of
Jennie Rosario, a/k/a Jenny Rosario,
08 CV 519 NDNY,

Plaintiff(s),

No. 09 CIV 6993 (AKH)(RLE)

ECF case

-against-

FRED HAGEN, Chief Benefits Officer,
1199SEIU BENEFIT & PENSION FUNDS,
as duly authorized designee of the
BOARD OF TRUSTEES OF THE 1199SEIU
BENEFIT FUND FOR HEALTH AND
HUMAN SERVICE EMPLOYEES,

Defendant(s).
-----X

NOTICE OF MOTION

Removed from Supreme Court
of the State of New York,
New York County,
Index No. 106627/09

PLEASE TAKE NOTICE, that upon the annexed Memorandum of Law dated September 8, 2009, the undersigned, counsel for Defendant 1199SEIU National Benefit Fund for Health & Human Service Employees ("Fund") (misnamed "Fred Hagen, Chief Benefits Officer, 1199SEIU Benefit & Pension Funds, as duly authorized designee of the Board of Trustees of the 1199SEIU Benefit Fund for Health & Human Service Employees"), shall move before this Court on October 5, 2009 for an order pursuant to Rule 12(b)(1), (6) or 12(c) of the Federal Rules of Civil Procedure dismissing this action against Defendants, or, in the alternative, a judgment in favor of the Defendants or remanding the claim to the Fund's Plan Administrator for review. The oral argument before this Court, if any, shall be held on a date and at a time to be designated by the Court.

Dated: New York, New York
September 8, 2009

Respectfully Submitted,

1199SEIU National Benefit Fund

By: Suzanne A. Metzger
Suzanne A. Metzger (SM7894)
Assistant General Counsel
Legal Department
330 West 42nd Street, 31st Floor
New York, NY 10036
(646) 473-6041 (phone)
(646) 473-6049 (facsimile)
Attorneys for Defendants

To:
Anthony M. Bentley (AB1853)
A. M. Bentley, PC
116 West 72nd Street
New York, NY 10023
(212) 459 4067 (phone)
(212) 877 2868 (facsimile)

Attorneys for Plaintiff